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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/508,777

09/23/2004

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EXAMINER

FISCHER, JUSTIN R

ART UNIT

PAPER NUMBER

1733

MAIL DATE

DELIVERY MODE

01/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/508,777

Applicant(s)

YOSHIMI ET AL.

Examiner

Justin R. Fischer

Art Unit

1733

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 January 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 04 January 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2 and 4-8.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


Justin R Fischer
Primary Examiner
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Continuation of 11: Applicant argues that Table 1 provides a conclusive showing of unexpected results for the combination of the a PEN cord in accordance with the claimed invention and a coating rubber having a modulus between 2 and 4 MPa and a rebound resilience of at least 60. Applicant points to Example 1, Example 3, and Comparative Example 1. The examiner respectfully disagrees. First, it is agreed that a direct comparison between Example 1, Example 3, and Example 4 suggests a slight improvement in high speed durability; however, Table 1 fails to provide a conclusive showing of unexpected results for a **modulus between 2 and 4 MPa** as none of the experiments include a coating rubber having a modulus above 4 MPa. Second, any comparison with Comparative Example 1 is not persuasive since it contains multiple parameters (total denier and coating rubber modulus) that are outside of applicant's claimed range. A more persuasive comparison would be between Example 3 and an example having a PEN 1670 dtex/2 cord and a coating rubber satisfying the claimed invention. It is emphasized that Table 1 fails to provide a conclusive showing of unexpected results for the combination of the claimed cord construction and the claimed rubber modulus. Also, the fact that Example 1 demonstrates improved properties over Comparative Example 1 is independent of any possible comparison between Example 3 and Comparative Example 1 since a plurality of parameters have been varied within the three examples.

As to Ueyoko, applicant argues that the reference is concerned with high speed and heavy duty tires, such as airplanes, while the claimed invention is directed to passenger car tires. First, it is noted that the claims as currently drafted are directed to

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a pneumatic tire and thus, the above noted argument is not commensurate in scope with the claimed invention. Second, the question is whether one of ordinary skill in the art at the time of the invention would have found it obvious to modify Tamura with Ueyoko. As set forth in the rejection, Ueyoko is similarly directed to a zero degree belt-reinforcing layer formed of high modulus, non-metallic reinforcing elements. In this instance, Ueyoko specifically suggests a coating rubber having a modulus between 3 and 7 to balance the reinforcement characteristics and the heat generation (e.g. low modulus rubber). A fair reading of Ueyoko does not suggest that such a coating rubber is limited to any one specific tire, it being well recognized that the above noted benefits would be desirable in a wide variety of tire constructions.



Justin R Fischer
Primary Examiner
Art Unit 1733

JRF
January 18, 2007